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## Appeal Decisions

Site visit made on 12 June 2020

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

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**Appeal A: APP/G3110/C/19/3239740**

**Appeal B: APP/G3110/C/19/3239738**

**Appeal C: APP/G3110/C/19/3239862**

**Land at 45 William Street, Oxford, Oxfordshire OX3 0ES**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Abdoul Wane (Appeal A), Mrs Zahara Wane (Appeal B) and Mrs Janet Willis (Appeal C) against an enforcement notice issued by Oxford City Council.
- The enforcement notice was issued on 31 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the Land from dwellinghouse within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to short term let accommodation (*sui generis* use).
- The requirements of the notice are: -
  - (i) Cease the use of the property on the Land as short term let accommodation.
- The period for compliance with the requirements is 30 days.
- Appeal A and Appeal B are proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
- Appeal C is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

**Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections.**

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### The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. Section 55 of the 1990 Act states, amongst other things, that '*development*', means the making of any material change in the use of any buildings or other land. To ensure that the description of the alleged breach reflects section 55 of the 1990 Act I consider that the wording '*change of use*' within the description of the alleged breach should be deleted. I intend to replace the deleted wording with '*the material change in the use*'. I can carry out these corrections without injustice to the parties.

### **Preliminary Matters - all appeals**

3. The reasons for issuing the enforcement notice cite a policy in the Council's Sites and Housing Plan. However, the Oxford Local Plan 2016-2036 (LP) was adopted on 8 June 2020 and the Council have confirmed that this policy and other policies cited in its Statements of Case have been superseded. All of the appellants have had the chance to comment on the submitted LP policies. I have dealt with the appeals on this basis.

### **Appeal A and Appeal B**

#### **The ground (b) appeals**

4. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellants must show on the balance of probabilities that the matters as alleged in the notices have not in fact occurred.
5. The Council has stated that it received a complaint in respect to the alleged material change of use of the appeal building from a dwelling house to short term let accommodation. As such, it began an investigation in January 2019 and as a result of its investigation it has found evidence that the property is available to stay in 365 days of the year, with the duration of stays varying from one night to one week. Moreover, the Council states that the property has been marketed on a number of short term let hosting websites including Airbnb and has provided evidence in the form of screen shots from those websites.
6. The Council acknowledges that there is still no fixed definition of short term lets. However, it goes on to state that typically these are normally any residential tenancy of less than six months where utilities, television and internet are included in the rent. Properties are let fully furnished and landlords are expected to provide a fully equipped kitchen with pots and pans, china, glassware and cutlery.
7. The appellants have not specifically disputed the Council's evidence and their case focusses on that there have been many companies letting out properties on a similar basis in Oxford for more than 15 years and why are they the only ones to have been served an enforcement notice. They also state, amongst other things, that 61% of bookings were made by families and parties were restricted to a maximum of 4 at any one time.
8. As such, the appellants consider that the use of the appeal property does not amount to a material change of use. Nevertheless, this is not a relevant argument to advance on ground (b) which is simply whether the property has been used, on the balance of probability, for short term let accommodation.
9. From the evidence supplied it is more likely than not that 45 William Street (No 45) has been used as short term let accommodation. Therefore, on the balance of probability the matters alleged in the enforcement notice have taken place and consequently the appeals on ground (b) must fail.

#### **The ground (c) appeals**

10. Ground (c) is that the matters alleged in the notice, if they have occurred, do not constitute a breach of planning control. It is a legal ground of appeal,

distinct from any planning merits. The onus of proving it lies with the appellant, and the test of the evidence is on the balance of probability.

11. The key question is whether '*development*' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful. As stated above, section 55 of the 1990 Act states that development includes '*the making of any material change in the use of any buildings or other land*'.
12. The Council have cited the Court of Appeal judgement in *Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202* (Moore) and 2 appeal decisions<sup>1</sup>. In this case No 45 is let out as one property as a whole and I acknowledge that it may be possible for it to be used for short term let purposes without the use necessarily amounting to a material change of use. It is a question of fact and degree in any one case. It is clear from the judgment in Moore that the issue involves an examination of the particular characteristics of the way the property is let and whether that amounts to a material change of use from the use as a dwellinghouse.
13. The appeal property is a two-storey, traditional, mid-terrace dwelling located in a cul-de-sac in a mainly residential area. No 45 has a short front garden and the majority of properties in William Street do not appear to have off-street parking facilities. As a result, I noted that generally parking takes place in marked bays on the pavement/highway and that the use of most of these bays is restricted to permit holders between the hours of 09.00 and 17.00 Mondays to Fridays.
14. There is no evidence to indicate that the appellants reside at No 45. The property is advertised as a holiday home/cosy family home on Booking.com and stays at the property are booked online based on the length of stay required by the occupants. It appears that No 45 can be booked for a minimum of one night or a number of nights. The appellants maintain that between January and September 2019 that 61% of bookings were made by families, a visiting group is restricted to a maximum of 4 residents, a noise monitor has been installed, guests are tourists who leave the property in the morning and usually come back in the evening and that not all of the parking permits have been used for the year.
15. I acknowledge that the property appears to have been set up for domestic use as a family home with a self-catering facility. However, other than the appellants' statement about the percentage of occupants being families, that have stayed at the property or the maximum number of guests staying at any one time, there is no specific evidence from the appellants such as booking forms to support those figures. Moreover, as bookings appear to be made online it would be difficult to enforce a maximum number of occupants that stay within the property or that they are a 'family'. This is borne out by a reply to one of the reviews on the website screenshots provided within the Council's evidence that states that there has been an instance where occupants have not declared that 12 people were to stay in the property and some occupants have had parties late at night.
16. I also do not have specific figures on the number of lettings that have occurred at the property since the appellants have let it out. However, the screenshots

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<sup>1</sup> APP/Q0505/C/18/3193261 & APP/Q0505/C/18/3196460

of the websites indicate that 55 and 45 separate reviews of the accommodation were made in 2018/2019. These reviews refer to stays of varying lengths from one day/night up to 10 days/nights. I have little evidence to indicate that the property is vacant, under normal circumstances, for large periods of time.

17. Based on the evidence before me, it is also reasonable to consider that the letting of the property for short terms of between one and ten days/nights at a time leads to a significant turnover of occupants. As a result, there appears to be a largely transient pattern and frequency of occupancy, compared to the more consistent pattern of occupancy that would normally be associated with that of a dwellinghouse.
18. This means a greater turnover of different people arriving and leaving, trying to get acquainted with the place, find their keys and park somewhere. Whilst, I noted that there are bus stops nearby, short-stay occupants unfamiliar with Oxford may be more likely to come by car or use taxis from the railway station, and there would be nothing to prevent them from doing this. Those arriving by car would then need to find somewhere to park within the cul-de-sac and to assess the parking restrictions in place. This could generate more vehicular comings and goings than a dwellinghouse, whose occupants would be more permanent and who would become more familiar with the area and hence would be more likely to use public transport, walking or cycling. I acknowledge that the appellants have not used all their allotted parking permits. However, the parking restrictions are only restrictive to parts of the day/week.
19. There would also be additional comings and goings from staff employed to clean the property and change bed linen as No 45 would need to be cleaned and beds changed after each stay. Whilst, the occupants of a dwellinghouse may employ a professional cleaner it is highly likely that this would be at most on a weekly basis. Whereas, the short term let use could generate multiple cleaning visits in a week. This increased intensity of service provision further distinguishes the use from a dwellinghouse.
20. I accept that some occupants could have been attending a university for a specific reason or may well have been a professional on business. In addition, the occupation of the property as a dwellinghouse by a single household could generate activity and associated noise and disturbance. Nevertheless, the transient pattern and occupancy of the short term let accommodation and its associated service provision all combine to increase general comings and goings to the property beyond what would normally be expected with a dwellinghouse use. Even though, a noise monitor appears to have been installed within the property and occupants appear to be informed about issues surrounding noise and disturbance the increase in comings and goings and the occupation of the property, more likely than not, results in an associated increase in overall noise and disturbance.
21. In conclusion on this matter, I find that the largely transient pattern and frequency of occupancy together with visits from staff employed to clean and change bed linen is significantly different compared to that of a dwellinghouse. Consequently, it is reasonable to consider that at the time the notice was issued that the level and character of activities that occurred at the site were materially different from those associated with a dwellinghouse.
22. As such, on the balance of probabilities, express planning permission is required for the making of a material change in the use of the property from a

dwellinghouse to short term let accommodation. I conclude that the matters alleged constitute a breach of planning control. There is no evidence that planning permission has been granted, therefore, the appeals on ground (c) must fail.

## **Appeal C**

### **The ground (a) appeal and deemed planning application**

#### ***Main issues***

23. The reasons for issuing the enforcement notice relate to the loss of a self-contained dwelling house. Nevertheless, the evidence before me also relates to the noise and disturbance associated with the development. All the parties have had the chance to comment on both of these issues. As a result, the main issues are: -

- The effect of the development on the provision of housing;
- The effect of the development on the living conditions of occupiers of the nearby dwellings, with regard to noise and disturbance.

#### ***Reasons***

##### *Provision of housing*

24. LP Policy H5 relates to development involving loss of dwellings and it states, amongst other things, that planning permission will not be granted for any development that results in the net loss of one or more self-contained dwellings on a site except where it meets one of a number of circumstances.
25. I consider that the change of use of the property has resulted in the loss of one self-contained dwelling. I have no evidence to indicate that the development meets one of the circumstances allowed within LP Policy H5. I acknowledge that the development has only resulted in the loss of one dwelling and that I have little evidence before me on the overall existing stock of homes in Oxford. Nevertheless, the supporting text to the policy states that given the scale of objectively assessed housing need in Oxford it will be important to ensure that the existing stock of homes is protected otherwise the benefits of building new housing would be undermined. Moreover, the LP has only recently been adopted.
26. The appellant refers to a Government Response document entitled '*Independent review of the sharing economy*' and I acknowledge that this highlights that the sharing economy is transforming the way we live our lives and we can now share our homes with people across the world specifically through online platforms such as '*Airbnb*'. However, this document does not form part of the statutory development plan and does not override the policies within it.
27. The appellant has also cited a background paper to the preferred options stage of the LP. This states that the Preferred Options Document makes it clear that the city seeks to prevent the loss of existing short-stay accommodation to other uses and that there is a preferred approach to permit new proposals in the city centre, district centres and on Oxfords main arterial routes. Nevertheless, I have little evidence before me to indicate whether this preferred approach was adopted within the LP. I also acknowledge that an

email from the Council was received that stated that it does not have a short let policy. However, that email also requests further information on what was required. In addition, the circumstances that are cited as exceptions within LP Policy H5 do not include the provision of short term let accommodation.

28. I accept that it is likely that there have been economic benefits from the development including job creation associated with the service provision and an increased spend in the local area associated with such accommodation. In addition, I acknowledge that the appellants' tenants appear to have had a conversation with a Council Officer who advised them to follow the general guidance on housing on the Council's website. Nonetheless, I have not been provided with any substantive evidence or exceptional circumstances to demonstrate that the need for this type of accommodation is more pressing than protecting the city's housing stock.
29. Based on the evidence before me, the development is contrary to LP Policy H5 and its economic benefits would not outweigh the conflict with this policy.

*Living conditions*

30. As stated above, No 45 is located in a predominantly residential area. The building itself is a two storey, mid-terrace house with a shallow garden area to the front. William Street is a relatively narrow residential road and has densely developed, traditional housing in close proximity to the road and the majority of the dwellings have no off-street parking provision. I noted at my site visit that there is a moderate background noise level from traffic on the surrounding road network, including Marston Road, when within William Street. I acknowledge that this is a snapshot in time and that at other times the background noise level may be different.
31. I have found that the transient pattern and occupancy of the short term let accommodation and its associated service provision all combine to increase general comings and goings to the property beyond what would normally be expected with a dwellinghouse use.
32. In addition, the transient nature and frequency of new occupiers would tend to mean that they have little connection to the local area and hence may be less inclined to respect the surrounding area and its existing residents, meaning they have fewer concerns or realisation of causing noise and disturbance.
33. Whilst there appears to be a guest selection process, a noise monitor has been installed within the property and 'house rules' are given to occupants to stress the importance of respecting nearby residents there is no one on site to control or manage the occupants to ensure this happens. Moreover, the submitted noise monitor reports do not state where the noise monitor is installed, how it is calibrated and there is no detail on what noise levels specifically constitute 'high', 'medium' or 'low'.
34. Moreover, the reviews on the website screen shots and the replies to them indicate that even with these measures in place that there have been issues in relation to the number of guests staying at the property and noise/disturbance. I note that soundproof boards on the walls with the neighbouring properties could be fitted. Nevertheless, no evidence has been provided as to the efficacy of such sound attenuation measures. Furthermore, noise and disturbance can also be generated by general activities that take place outside of the property,



such as those associated with the coming and goings of the occupants and the service provision and the use of outdoor space.

35. In this respect, the impact of the development upon occupiers of neighbouring properties is intensified by the close proximity of those neighbours. Even if there is only one neighbour who has complained, and specific noise and disturbance issues highlighted by that person are not supported by the noise monitor reports this does not necessarily mean that the reported problems should be disregarded or should carry little weight. Moreover, as stated above the website reviews by occupants also highlight noise and disturbance issues with the neighbours. This strongly suggests that the Council's concerns are well-founded.
36. I acknowledge that there appears to be a mix of student housing and housing in multiple occupancy in the surrounding area. However, the transient nature and frequent turnover of occupants that is associated with the development would not normally be associated with that type of accommodation.
37. I conclude that the pattern and nature of the occupation, at such close proximity to neighbouring dwellings is, more than likely, materially harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. It follows that the development does not comply with LP Policy RE7 which, amongst other things, states that planning permission will only be granted for development that ensures the amenity of neighbours is protected.

#### *Other matters*

38. The appellant has referred to furnished short stay accommodation that has been offered by established companies in Oxford for more than 15 years and questions why they have not been requested to apply for planning permission. However, I do not have the details of whether these developments are in breach of planning control or the circumstances if they were found to be acceptable in planning terms. Moreover, as stated above it may be possible for a property to be used for short term let purposes without the use necessarily amounting to a material change of use. It is a question of fact and degree in any one case. In addition, the LP has only been recently adopted. Consequently, I cannot be certain that the circumstances are comparable to the development before me. In any case, I am required to determine the appeal on its individual merits.
39. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

#### *Conclusion on ground (a) and the deemed planning application*

40. Taking into account all of the above, the development is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
41. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

**Conclusion – Appeal A, Appeal B and Appeal C**

42. For the reasons given above I consider that the appeals should not succeed, and the enforcement notice is upheld.

**Formal Decisions – Appeal A, Appeal B and C**

43. It is directed that the enforcement notice be corrected by: -

- Deleting the wording '*change of use*' within the description of the alleged breach;
- Replace the deleted wording with '*the material change in the use*' within the description of the alleged breach.

Subject to these corrections the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

*D. Boffin*

INSPECTOR